

FILED 3194

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

MAR 11 2005

UNITED STATES OF AMERICA,)

Plaintiff,)

Vs.) CRIMINAL ACTION NO. 1:01CR45

ROBERT B. BURNS. JR., ET AL.,)

Defendants.)

Day 15 & 16 - February 3-4, 2003

Proceedings had in the Trial of the above styled action on February 3 and 4, 2003, before Honorable Irene M. Keeley, Chief Judge, at Clarksburg, West Virginia.

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Proceedings recorded by stenomask, transcript produced by official court reporter.

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P R O C E E D I N G S

(02-03-2003, 8:37 o'clock a.m., defendants present)

THE COURT: Do you have any issues with the form?

MR. JAFFE: We're satisfied with respect to the form.

THE COURT: Okay. I'm sorry to be so late giving you the charge; it's been a little confused back there, but we-- the changes to the deliberate ignorance instruction are-- begin on page forty-four and the only other changes were a modification to the statute on the elements of conspiracy on both mail fraud, health care fraud and also money laundering but they are things we talked about on Friday. May I have the verdict form, Carole, please?

On the verdict form, you'll note that as to the Counts Two through Fifteen each Count is one page and I think that looks pretty much like what you saw on Friday. When you get to the Halstead counts on Counts Seventeen through Twenty-Six, we introduced that on the first--page eighteen of the verdict form and each of those following pages, Mr. Jaffe, is just a chart with the opportunity for the verdict.

MR. JAFFE: I've reviewed it and it's consistent with our earlier discussions.

THE COURT: Is it okay?

MR. JAFFE: Yes, Your Honor.

THE COURT: All right. Is there any matters--I know

1 you haven't really had a chance to look this final charge
2 over but if you'll just look at that deliberate ignorance one
3 because I think that's where the major change is and that's
4 on page forty-four and what I did, I went and read Mr.
5 Jaffe's case and then we looked at some other cases, I think
6 *Hale* is the one that he cited and there--the element of
7 knowledge of the unlawfulness of the plan or scheme, I think
8 he rightly pointed out needed to be emphasized and I tried to
9 do that in the body of that and then I added a final
10 paragraph.

11 MR. JAFFE: Judge, I believe and also I think that
12 accurately states what I had in mind.

13 THE COURT: Okay. Thank you. Does the Government
14 have any objection to that amendment to the charge on
15 deliberate ignorance?

16 MR. ADAMS: No, Your Honor.

17 THE COURT: Okay. Are we ready to bring the jury
18 in?

19 MR. HARRIS: Your Honor, could--just quickly give us
20 a rundown now of how we're going to do this?

21 THE COURT: Uh-huh. I'm going to charge them; going
22 to give them a ten-minute recess because that's how long Ted
23 needs with you all to set up for the close; then bring them
24 back in. We're going to do the Government's opening part of
25 its close and my recollection is that comes with Mr. Jaffe

1 and then we take a ten-minute recess and then we have your
2 close and the rebuttal.

3 MR. JAFFE: All before lunch, Judge?

4 THE COURT: Hopefully, but if not--

5 MR. ZIMAROWSKI: Am I--

6 THE COURT: I said both of you. If not, then what
7 we'll do is recess after you, maybe that's what we're going
8 to have to do; otherwise, I'll start and you all will be back
9 on it and then we'll come back and do the two final closes
10 and the rebuttal. Is that all right?

11 MR. HARRIS: That's fine, Your Honor.

12 THE COURT: Okay. Very good. We can bring the jury
13 in.

14 (Jury in 8:42 a.m.)

15 THE COURT: Good morning ladies and gentlemen.
16 Please be seated. Are your notebooks on your chairs? That's
17 the beginning of the final charge but I'm going to wait for
18 the notebooks so that if you want to take notes during the
19 charge you can. We are also supposed to have copies for you.

20 Ladies and gentlemen, what I'm going to do is I'm going
21 to begin the charge with regard to the general information on
22 the case, which will repeat in part some of what I told you
23 at the beginning of the case. During that time, hopefully,
24 the charge will be copied and then I can provide to you a
25 copy of that charge during just a minute recess and then

1 you'll have it before I give you the substantive law on the
2 case.

3 All right. Have to wait for Mr. Philyaw, however, for
4 the power point.

5 JURY CHARGE

6 THE COURT: You have heard the evidence in the case,
7 and I must now instruct you as to the law applicable to this
8 case. The final arguments of counsel will follow these
9 instructions.

10 As you know, the trial function of the judge is to
11 preside in such manner that proper and relevant evidence is
12 presented, and to instruct the jury as to the law applicable
13 to the case.

14 Your function as the jury, on the other hand, is to
15 determine from the facts from a fair--determine the facts
16 from a fair consideration of the evidence presented in the
17 case and not from anything else. The evidence should be
18 considered and viewed by you in the light of your own
19 observations and experience in the ordinary affairs of life.

20 You have been chosen and sworn as jurors in this case to
21 try the issues of fact presented by the allegations of the
22 Indictment as to the defendants and the denial made by their
23 "Not Guilty" pleas. You are to perform this duty without
24 bias or prejudice to any party. The law does not permit you
25 to be governed by conjecture, suspicion, surmise, sympathy,

1 speculation, prejudice or public opinion. Nor may your
2 verdict be based on any of these things. The Government, the
3 defendants, William C. Filcheck, Scott G. Taylor and Ronald
4 L. Halstead, and the public expect that you will carefully
5 and impartially consider all the evidence in the case, and
6 follow the law as stated by the Court.

7 As I earlier indicated to you, an indictment is but a
8 formal method of accusing defendants of a crime. It is not
9 evidence of any kind against any of the individual
10 defendants. It does not create any presumption or permit any
11 inference of guilt. It is merely the formal means by which
12 the Government accuses individuals of a crime in order to
13 bring them to trial. The defendants have answered the
14 charges in this case by pleading not guilty and you must not
15 be prejudiced against them because an indictment has been
16 filed.

17 There are two types of evidence from which you may find
18 the truth as to the facts of a case -- direct evidence and
19 circumstantial evidence.

20 Direct evidence is the testimony of one who asserts
21 actual knowledge of a fact, such as an eyewitness.

22 Circumstantial evidence is proof of a chain of facts and
23 circumstances indicating some further fact which, in a
24 criminal case, may bear on the guilt or innocence of a
25 defendant.

1 The law makes no distinction between the weight to be
2 given to either direct or circumstantial evidence. Nor is a
3 greater degree of certainty required of circumstantial
4 evidence than of direct evidence.

5 Unless you are otherwise instructed, the evidence in this
6 case consists of the SWORN and STIPULATED testimony of the
7 witnesses and all exhibits received in evidence.

8 The attorneys for the parties during the trial and in the
9 presence of the defendants can stipulate or agree as to
10 certain matters. In this trial, you will recall, the parties
11 have stipulated as follows:

12 The last three audiotapes made by Special Agent
13 Robert Muth regarding his participation in an undercover
14 investigation at Priority One are not available.

15 Any evidence as to which an objection was sustained by
16 the Court, and any evidence ordered stricken by the Court,
17 must be entirely disregarded.

18 Unless you are otherwise instructed, anything you may
19 have read, heard, or seen outside the courtroom is not
20 evidence, and must be entirely disregarded.

21 You are to consider only the evidence in the case. But
22 in your consideration of the evidence, you are not limited to
23 the bald statements of the witnesses. In other words, you
24 are not limited solely to what you saw and heard as the
25 witnesses testified. You are permitted to draw, from facts

1 which you find have been proved, such reasonable inferences
2 as you believe are justified in the light of experience.

3 As I have also indicated to you, the statements,
4 questions and argument of counsel are not evidence in the
5 case. They are intended only to assist the jury in
6 understanding the evidence and the contentions made.

7 Further, no remark, ruling, question, remark or comment
8 which I have made during the course of the trial was intended
9 to indicate my opinion as to how you should decide the case
10 or to influence you in any way in your determination of the
11 facts, nor should you draw any inferences from anything I may
12 have said. You alone are to judge for yourselves the
13 questions of fact in this case.

14 If any reference by the court or by counsel to matters of
15 testimony or exhibits does not coincide with your own
16 recollection of that evidence, it is your recollection which
17 should control during your deliberations and not the
18 statements of the court or of counsel.

19 You are the sole judges of the evidence received in this
20 case.

21 In resolving the issues in this case, you must bear in
22 mind that, under the law of our land, the defendants, William
23 C. Filcheck, Scott G. Taylor, and Ronald L. Halstead, are
24 presumed to be innocent - and this presumption of innocence
25 remains with them at every stage of the trial. Thus, each

1 defendant, although accused, begins the trial with a "clean
2 slate" -- with no evidence against him. The presumption of
3 innocence alone is sufficient to acquit a defendant, unless
4 you are satisfied beyond a reasonable doubt of his guilt
5 after careful and impartial consideration of all the evidence
6 in the case.

7 In this case, as in every criminal case, the burden of
8 proof is upon the Government to establish, first, the fact
9 that the crimes charged were committed and second, that the
10 defendants on trial are guilty of the commission of each of
11 the particular crimes as charged, beyond a reasonable doubt.

12 This burden never shifts to the defendants, but remains
13 upon the Government throughout the trial.

14 A "reasonable doubt" means in law just what the words
15 imply, namely, a doubt based upon reason and common sense.
16 Its meaning is self-evident and I will not attempt to define
17 the term further.

18 You are instructed that it is not necessary to prove the
19 exact location of the commission of an alleged offense. It
20 is sufficient if the evidence in the case establishes beyond
21 a reasonable doubt that the offense was committed within the
22 Northern District of West Virginia.

23 You will note that the Indictment charges that the
24 offenses were committed "on or about" a certain date. The
25 proof need not establish with certainty the exact date of the

1 alleged offenses. It is sufficient if the evidence in the
2 case establishes beyond a reasonable doubt that the offenses
3 were committed on a date reasonably near the date alleged.

4 I will now define a series of terms for you. Each of
5 these words will be used frequently throughout these
6 instructions and their meaning is important in understanding
7 the law.

8 The word "knowingly" means that a defendant was conscious
9 and aware of his actions, realized what he was doing or what
10 was happening around him, and did not act because of
11 ignorance, mistake, or accident.

12 The word "willfully" means that a defendant committed an
13 act voluntarily and purposely, with the specific intent to do
14 something the law forbids; that is, with bad purpose either
15 to disobey or disregard the law.

16 The word "unlawfully" means contrary to law. So, to do
17 an act "unlawfully" means to do willfully something which is
18 contrary to law.

19 The word "principal" means the criminal actor; the person
20 who actually commits a crime.

21 The guilt of an accused in a criminal case may be
22 established without proof that he personally did every act
23 constituting the offense alleged. The law recognizes that,
24 ordinarily, anything a person can do for himself may also be
25 accomplished by him through direction of another person as

1 his "agent," or by acting in concert with, or under the
2 direction of, another person or persons in a joint effort or
3 enterprise.

4 To act with "intent to defraud" means to act knowingly
5 and with the intention or the purpose to deceive or to cheat.
6 An "intent to defraud" is accomplished, ordinarily, by a
7 desire or with a purpose to bring about some gain or benefit
8 to oneself or to some other person or by a desire or with a
9 purpose to cause a loss to some person. Intent ordinarily
10 may not be proved directly, because there is no way of
11 fathoming or scrutinizing the operations of the human mind.
12 But you may infer a defendant's intent from the surrounding
13 circumstances. You may consider any statement made and done
14 or omitted by that defendant, and all other facts and
15 circumstances in evidence which indicate his state of mind.

16 You may consider it reasonable to draw the inference and
17 find that a person intends the natural and probable
18 consequences of acts knowingly done or knowingly omitted. As
19 I have said, it is entirely up to you to decide what facts to
20 find from the evidence.

21 A statement or representation is "material" if it has a
22 natural tendency to influence or is capable of influencing a
23 decision or action of the person or group to whom the
24 statement or representation was made.

25 To be "material" it is not necessary that the statement

1 or representation did, in fact, influence or deceive. In
2 other words, a misrepresentation is material if it relates to
3 an important fact as distinguished from some unimportant or
4 trivial detail.

5 The word "false" means contrary to the truth. As used in
6 the law, the word "false" generally means more than an
7 innocent mistake or a simple error of fact.

8 A statement or representation is "false" or "fraudulent"
9 if it relates to a material fact and is known to be untrue or
10 is made with reckless indifference as to its truth or
11 falsity, and is made or caused--is made or caused to be made
12 with intent to defraud. A statement or representation may
13 also be "false" or "fraudulent" when it constitutes a half
14 truth, or effectively conceals a material fact, with intent
15 to defraud.

16 As used in these instructions, the term "health care
17 benefit program" means any public or private plan or
18 contract, affecting commerce, under which any medical
19 benefit, item, or service is provided to any individual, and
20 includes any individual or entity who is providing a medical
21 benefit, item, or service for which payment may be made under
22 the plan or contract.

23 The phrase "a scheme or artifice to defraud or to obtain
24 money" means any deliberate plan of action or course of
25 conduct by which someone intends to deceive or to cheat

1 another or by which someone intends to deprive another of
2 something of value.

3 The term "false or fraudulent pretenses, representations,
4 or promises" means a statement or an assertion which concerns
5 a material or important fact or a material or important
6 aspect of the matter in question and that was either known to
7 be untrue at the time that it was made or used, or that was
8 made or used with reckless indifference as to whether it was,
9 in fact, true or false, and was made or used with the intent
10 to defraud. A material fact is a fact that would be of
11 importance to a reasonable person in making a decision about
12 a particular matter or transaction.

13 The term "false or fraudulent pretenses, representations,
14 or promises" includes actual, direct false statements as well
15 as half truths, and includes the knowing concealment of facts
16 that are material or important to the matter in question and
17 that were made or used with the intent to defraud.

18 As you recall from my Preliminary Instructions to you,
19 you as jurors are the sole judges of the credibility of the
20 witnesses and the weight their testimony deserves.

21 You are not required to accept testimony, even though the
22 testimony is uncontradicted and the witness is not impeached.

23 You should carefully consider each witness's
24 intelligence, motive, state of mind, and demeanor and manner
25 while on the stand. Consider also any relation each witness

1 may bear to either side of the case, the manner in which each
2 witness might be affected by the verdict, and the extent to
3 which, if at all, each witness is either supported or
4 contradicted by other evidence in the case.

5 Inconsistencies or discrepancies in the testimony of a
6 witness, or between the testimony of different witnesses, may
7 or may not cause the jury to discredit such testimony. Two
8 or more persons witnessing an incident or a transaction may
9 see or hear it differently, and innocent misrecollection,
10 like failure of recollection, is not an uncommon experience.
11 In weighing the effect of a discrepancy, always consider
12 whether it pertains to a matter of importance or an
13 unimportant detail, and whether the discrepancy results from
14 innocent error or intentional falsehood.

15 In addition, the testimony of a witness may be
16 discredited or impeached by showing that he or she previously
17 made statements which are inconsistent with his or her
18 present testimony. As a general rule, earlier contradictory
19 statements are admissible only to impeach the credibility of
20 the witness, and not to establish the truth of those
21 statements.

22 If a witness is shown to have knowingly testified falsely
23 concerning any material matter, or conducted himself or
24 herself in a manner that indicates a propensity to lie, or
25 involves some element of deceit or untruthfulness, you have a

1 right to distrust the testimony of that witness in other
2 particulars, and you may reject all the testimony of that
3 witness or give it such credibility as you may think it
4 deserves.

5 In this connection, the weight of the evidence is not
6 necessarily determined by the number of witnesses testifying.
7 Rather, you should consider all the facts and circumstances
8 in evidence to determine which of the witnesses are worthy of
9 greater credence or believability.

10 Evidence of a witness's prior criminal convictions and
11 punishment have been brought to your attention only to help
12 you decide whether to believe what the witness testified to
13 here in court and how much to rely on that testimony, and for
14 no other purpose.

15 The testimony of an immunized witness, someone who has
16 been told either that his crimes will go unpunished in return
17 for testimony or that his testimony will not be used against
18 him in return for that cooperation, must be examined and
19 weighed by the jury with greater care than the testimony of
20 someone who is appearing in court without the need for such
21 an agreement with the Government.

22 Dr. Barry Markson, D.C., may be considered to be an
23 immunized witness in this case.

24 The jury must determine whether the testimony of an
25 immunized witness has been affected by self-interest, or by

1 the agreement he has with the Government, or by his own
2 interest in the outcome of this case, or by prejudice against
3 the defendant.

4 Throughout the course of this trial you have seen some
5 demonstrative exhibits that have been used to help explain
6 the evidence. That is their only purpose, to help explain
7 the evidence. Unless they have been admitted into evidence,
8 they are not themselves proof of any facts.

9 The testimony of a law enforcement agent is entitled to
10 no special or exclusive sanctity. A law enforcement agent
11 who takes the witness stand subjects his or her testimony to
12 the same examination and the same tests that any other
13 witness does. You should recall their demeanor on the stand,
14 their manner of testifying, the substance of their testimony,
15 and weigh and balance it just as carefully as you would the
16 testimony of any other witness. People employed by the
17 Government, including law enforcement agents, do not stand in
18 any higher station in the community than other persons, and
19 their testimony is not entitled to any greater weight than
20 other witnesses.

21 You have heard several tape recordings. These tapes were
22 received into evidence and may be considered by you along
23 with all the other evidence in the case. Typewritten
24 transcripts of these tape recorded conversations have been
25 furnished to you solely for your convenience or in

1 identifying the speakers.

2 The tapes themselves, however, are the evidence in the
3 case and the typewritten transcripts are not evidence. What
4 you hear on the tapes is evidence. What you read on the
5 transcript is not. If you perceive any variation between the
6 two, you should be guided solely by the tapes and not by the
7 transcripts.

8 If you cannot, for example, determine from the tape
9 recording that particular words were spoken or if you cannot
10 determine from the tape recording who said a particular word
11 or words, you must disregard the transcripts insofar as those
12 words or that speaker are concerned.

13 Charts or summaries have been prepared by Government
14 witnesses, have been admitted into evidence and have been
15 shown to you during the trial for the purpose of explaining
16 facts that are allegedly contained in books, records, or
17 other documents which are also in evidence in the case. You
18 may consider the charts and summaries as you would any other
19 evidence admitted during the trial and give them such weight
20 or importance, if any, as you feel that they deserve.

21 As I stated in my Preliminary Instructions to you, the
22 law does not compel a defendant in a criminal case to take
23 the witness stand and testify, and no presumption of guilt
24 may be raised, and no inference of any kind may be drawn,
25 because a defendant does not testify. The law never imposes

1 upon any defendant in a criminal case the burden or duty of
2 calling any witnesses or producing any evidence. However, a
3 defendant who does testify is a competent witness and his
4 testimony is to be judged in the same way that you judge the
5 testimony of other witnesses.

6 You have heard reputation and opinion evidence about
7 defendants William C. Filcheck's and Scott G. Taylor's
8 character for truthfulness, honesty and law-abiding nature.

9 Evidence of a defendant's character, inconsistent with
10 those traits of character ordinarily involved in the
11 commission of the crime charged, may give rise to a
12 reasonable doubt, since you may think it improbable that a
13 person of such good character would commit such a crime.

14 You are to return your verdict upon the basis of the
15 evidence which was presented to you at the trial and in
16 accordance with these instructions that I am in the process
17 of giving to you. If the evidence in the case convinces you
18 beyond a reasonable doubt that a defendant is guilty of any
19 of the offenses charged in the Indictment, then it will be
20 your duty to find that defendant guilty of those counts.

21 In this regard, a separate crime or offense is charged
22 against the individual defendants with respect to each count
23 of the Indictment in which he is named. Each offense, and
24 the evidence pertaining to it, should be considered
25 separately. Also, the case of each of the defendants should

1 be considered separately and individually. The fact that you
2 may find a defendant guilty or not guilty of any of the
3 offenses charged should not control your verdict as to any
4 other offense. You must give separate and individual
5 consideration to each charge against each defendant.

6 I caution you, members of the jury, that you are here to
7 determine whether the Government has proved or failed to
8 prove the guilt of the defendants, William C. Filcheck, Scott
9 G. Taylor and Ronald L. Halstead, from the evidence in this
10 case. The defendants are not on trial for any act or conduct
11 or offense not alleged in the Indictment. Neither are you
12 called upon to return a verdict as to the guilt or innocence
13 of any other person or persons not on trial as a defendant in
14 this case.

15 As I have previously advised you, the charges against
16 Robert B. Burns have been removed from your consideration and
17 are not before you for decision.

18 Do not concern yourself with this development and do not
19 speculate about it.

20 The removal of this portion of the case must not
21 influence your consideration of those portions of the case
22 which you must decide.

23 Also, the punishment provided by law for the offenses
24 charged in the Indictment is a matter which should never be
25 considered by the jury in any way in arriving at an impartial

1 verdict as to the guilt or innocence of the individual
2 defendants.

3 You, as jurors, are the judges of the facts. But in
4 determining what actually happened in this case - that is, in
5 reaching your decision as to the facts - it is your sworn
6 duty to follow the law I am now in the process of defining
7 for you.

8 You must follow all of my instructions as a whole. You
9 have no right to disregard or give special attention to any
10 one instruction, or to question the wisdom or correctness of
11 any rule that I may state to you. That is, you must not
12 substitute your own notion or opinion as to what the law is
13 or ought to be. It is your duty to apply the law as I give
14 it to you, regardless of the consequences.

15 By the same token it is also your duty to base your
16 verdict solely upon the testimony and evidence in the case,
17 without prejudice or sympathy. That was the promise you made
18 and the oath you took before being accepted by the parties as
19 jurors in this case, and they have the right to expect
20 nothing less.

21 All right, ladies and gentlemen, before I instruct you on
22 the specific charges in the case I'll ask Carole and Ted if
23 they would please pass out the copies of the Charge to the
24 jury. Thank you.

25 (Pause)

1 THE COURT: I will now provide you specific
2 instructions relating to each of the charges in the
3 Indictment.

4 Count 1 of the Indictment charges that beginning in
5 approximately September 1993, and continuing thereafter
6 through May of 1997, in the Northern District of West
7 Virginia, and elsewhere, defendants, William C. Filcheck,
8 Scott G. Taylor and Ronald L. Halstead, together with others
9 known and unknown to the grand jury, knowingly combined, and
10 conspired, and confederated and agreed together and with each
11 other to commit the following offenses against the United
12 States:

13 a. To knowingly and willfully devise and intend to
14 devise a scheme and artifice to defraud health care benefit
15 programs, and to obtain by means of materially false and
16 fraudulent pretenses representations, and promises, money
17 owned by and under the custody and control of health care
18 benefit programs, in connection with the delivery of and
19 payment for, health care benefits, items and services, in
20 violation of Title 18 U.S.C. § 1347, and

21 b. To knowingly and willfully devise and intend to
22 devise a scheme and artifice to defraud, and for obtaining
23 money and property from various health care benefit programs
24 by means of materially fraudulent and misleading pretenses,
25 representations and promises, and to use the United States

1 Postal Service and private and commercial interstate
2 carriers, in violation of Title 18 U.S.C. § 1341.

3 Title 18, United States Code, Section 1341, I'm sorry,
4 Section 371, provides in pertinent part, that:

5 If two or more persons conspire ... to commit any
6 offense against the United States,... and one or
7 more of such persons does any act to effect the
8 object of the conspiracy,...[each person shall be
9 guilty of an offense against the United States].

10 Count 1 of the Indictment charges Robert B. Burns and the
11 defendants, William C. Filcheck, Scott G. Taylor and Ronald
12 L. Halstead, with the crime of conspiracy, in violation of
13 Title 18, United States Code, Section 371. This law makes it
14 a separate federal crime or offense for anyone to conspire or
15 agree with someone else to do something which, if actually
16 carried out, would amount to another federal crime or
17 offense. So, under this law, a "conspiracy" is an agreement
18 or a kind of "partnership" in criminal purposes in which each
19 member becomes the agent or partner of every other member.
20 In order to establish a conspiracy offense it is not
21 necessary for the Government to prove that all of the people
22 named in the Indictment were members of the scheme; or that
23 those who were members had entered into any formal type of
24 agreement; or that the members had planned together all of
25 the details of the scheme or the "overt acts" that the

1 Indictment charges would be carried out in an effort to
2 commit the intended crime. Also, because the essence of a
3 conspiracy offense is the making of the agreement itself
4 (followed by the commission of any overt act), it is not
5 necessary for the Government to prove that the conspirators
6 actually succeeded in accomplishing their unlawful plan.
7 What the evidence in the case must show beyond a reasonable
8 doubt is: First: That a defendant and at least one other
9 person made an agreement to try to accomplish a common and
10 unlawful plan to commit the crimes of health care fraud and
11 mail fraud, as charged in the Indictment;

12 Second: That a defendant, knowing the unlawful purpose
13 of the plan, willfully joined in it, intending to further the
14 unlawful purpose;

15 Third: That one of the conspirators during the existence
16 of the conspiracy knowingly committed at least one of the
17 overt acts described in the Indictment; and

18 Fourth: That such overt act was knowingly committed in
19 an effort to carry out or accomplish some object of the
20 conspiracy.

21 A person may become a member of a conspiracy without
22 knowing all of the details of the unlawful scheme, and
23 without knowing who all of the other members are. So, if an
24 individual defendant has a general understanding of the
25 unlawful purpose of the plan and knowingly and willfully

1 joins in that plan on one occasion, that is sufficient to
2 convict that individual defendant of conspiracy even though
3 he did not participate before, and even though he played only
4 a minor part. Of course, mere presence at the scene of a
5 transaction or event, or the mere fact that certain persons
6 may have associated with each other, and may have assembled
7 together and discussed common aims and interests, does not
8 necessarily establish proof of a conspiracy. Also, a person
9 who has no knowledge of a conspiracy, but who happens to act
10 in a way which advances some purpose of the conspiracy, does
11 not thereby become a conspirator.

12 In deciding whether a particular defendant was, in fact,
13 a member of the conspiracy, you should consider whether the
14 defendant knew the purpose and the object of the conspiracy,
15 and knowing that, willfully participated in the conspiracy,
16 that is, helped advance or further the unlawful object of the
17 conspiracy, and that he did it deliberately, intentionally
18 and willfully, not inadvertently, negligently or innocently.

19 You may consider proof of a defendant's financial
20 interest in the outcome of the scheme when determining
21 whether or not the defendant was a member of the conspiracy
22 charged in the Indictment.

23 An "overt act" is any transaction or event, even one of
24 which may be entirely innocent when considered alone, but
25 which is knowingly committed by a conspirator in an effort to

1 accomplish some object of the conspiracy.

2 The overt acts charged in this conspiracy are contained
3 in paragraphs 54 through 72 of the Indictment.

4 Count 1 charges the defendants with conspiring to violate
5 both the mail fraud and health care fraud statutes. The mail
6 fraud statute was effective during the entire time period
7 alleged in the Indictment. The health care fraud statute was
8 effective beginning on August 21st of 1996.

9 Title 18, United States Code, Section 1347, provides, in
10 part, that:

11 Whoever knowingly and willfully executes, or
12 attempts to execute, a scheme or artifice -
13 (1) to defraud any health care benefit program;
14 or (2) to obtain, by means or false or fraudulent
15 pretenses, representations, or promises, any of the
16 money. . . owned by, or under the custody or control
17 of, any health care benefit program,
18 in connection with the delivery of or payment for
19 health care benefits, items, or services, [shall be
20 guilty of an offense against the United States].

21 In order to sustain its burden of proof for the crime of
22 health care fraud, the Government must prove the following
23 essential elements beyond a reasonable doubt:

24 First: A defendant knowingly and willfully executed or
25 attempted to execute a scheme or artifice to defraud a health

1 care benefit program or to obtain, by means of false or
2 fraudulent pretenses, representations, or promises, any of
3 the money owned by, or under the custody or control of, any
4 health care benefit program in connection with the delivery
5 of or payment for health care benefits, items or services, as
6 detailed in Count 1 of the indictment;

7 Second: The false or fraudulent pretenses,
8 representations, or promises were material; and

9 Third: A defendant did so with intent to defraud.

10 Title 18, United States Code, Section 1341, provides, in
11 part, that:

12 Whoever, having devised or intending to devise any
13 scheme or artifice to defraud, or for obtaining
14 money or property by means of false or fraudulent
15 pretenses, representations, or promises, ... for the
16 purpose of executing such scheme or artifice or
17 attempting to do so, places--or so to do, excuse me,
18 places in any post office or authorized depository
19 for mail matter, any matter or thing whatever to be
20 sent or delivered by the Postal Service, or deposits
21 or causes to be deposited any material or thing
22 whatever to be sent or delivered by any private or
23 commercial interstate carrier, or takes or receives
24 therefrom, any such matter or thing, or knowingly
25 causes to be delivered by mail or such carrier

1 according to the direction thereon, or at the place
2 at which it is directed to be delivered by the
3 person to whom it is addressed, any such matter or
4 thing, [shall be guilty of an offense against the
5 United States].

6 In order to sustain its burden of proof for the crime of
7 mail fraud, the Government must prove the following essential
8 elements beyond a reasonable doubt:

9 First: a scheme, substantially as charged in the
10 Indictment, to defraud;

11 Second: a defendant knowingly and willfully participated
12 in this scheme with the intent to defraud; and

13 Third: the use of the United States mail, on or about the
14 date charged, in furtherance of this scheme.

15 I instruct you that as long as the Government proves
16 these three elements, it is not relevant whether anyone was
17 actually defrauded. In other words, it is not necessary that
18 the fraud be successful for you to find the defendants
19 conspired to commit this crime--or this offense.

20 The crime of conspiracy to commit mail fraud also does
21 not require proof of an actual mailing.

22 Instead, the crime of conspiracy to commit mail fraud
23 requires, among other things, proof that the persons charged
24 with the conspiracy reasonably contemplated the use of the
25 mail so that the persons charged intended that the mails be

1 used in furtherance of the scheme or that the nature of the
2 scheme was such that the use of the mail was reasonably
3 foreseeable.

4 A conspirator is responsible for substantive offenses
5 committed by his fellow conspirators if (1) he was a member
6 of the conspiracy when the offense was committed, and (2) the
7 offense was committed in furtherance of and as a foreseeable
8 consequence of the conspiracy.

9 Therefore, if you find a defendant guilty of the
10 conspiracy charged in Count 1, and I'm going to divert here
11 from what you're reading; that is the conspiracy to commit
12 health care fraud and to commit mail fraud and if you find
13 beyond a reasonable doubt that, while he was a member of the
14 conspiracy, his fellow conspirators committed the offenses
15 charged in Counts 2 through 15 in furtherance of, and as a
16 foreseeable consequence of that conspiracy, then you may find
17 him guilty of Counts 2 through 15.

18 All right. That completes the instruction on the
19 conspiracy count. We now turn our attention to Counts 2
20 through 14, health care fraud and aiding and abetting.

21 Counts 2 through 15 of the Indictment charge Robert B.
22 Burns and the defendants, William C. Filcheck, Scott G.
23 Taylor, and Ronald L. Halstead, with the crimes of (1) health
24 care fraud, a violation of 18, United States Code, Section
25 1347; and (2) aiding and abetting each other in the

1 commission of health care fraud, a violation of Title 18,
2 United States Code, Section 2.

3 Counts 2 through 15 of the Indictment charge that during
4 the period from in or about September 1996 through February
5 1997, in the Northern District of West Virginia, Robert B.
6 Burns, and the defendants, William C. Filcheck, Scott G.
7 Taylor, and Ronald L. Halstead, knowingly and willfully
8 executed and attempted to execute a scheme and artifice to
9 defraud Medicare (that's Counts 2 through 5); Pennsylvania
10 Blue Cross Blue Shield (Counts 6 through 9); West Virginia
11 Public Employees Insurance Agency (Counts 10 through 13);
12 Railroad Maintenance and Industrial Health and Welfare Fund
13 (Count 14); and Accordia National (Count 15), and to obtain,
14 by means of false and fraudulent pretenses, representations
15 and promises, money owned by and under the custody and
16 control of said health care benefit programs, in connection
17 with the delivery of and payment for health care benefits,
18 items and services in violation of Title 18 United States
19 Code §§ 1347 and 2.

20 The general nature of the scheme or plan to defraud and
21 to obtain money by means of false or fraudulent pretenses,
22 representations or promises are as alleged in Count 1 of the
23 Indictment.

24 As I previously instructed you, Title 18, United States
25 Code, Section 1347, provides, in pertinent part, that:

1 Whoever knowingly and willfully executes, or
2 attempts to execute, a scheme or artifice -
3 (1) to defraud any health care benefit program;
4 or (2) to obtain, by means or false or fraudulent
5 pretenses, representations, or promises, any of the
6 money. . . owned by, or under the custody or control
7 of, any health care benefit program,
8 in connection with the delivery of or payment for
9 health care benefits, items, or services, [shall be
10 guilty of an offense against the United States].

11 As I previously instructed you, in order to sustain its
12 burden of proof for the crime of health care fraud, the
13 Government must prove the following essential elements beyond
14 a reasonable doubt:

15 First: A defendant knowingly and willfully executed or
16 attempted to execute a scheme or artifice to defraud a health
17 care benefit program or to obtain, by means of false or
18 fraudulent pretenses, representations, or promises, any of
19 the money owned by, or under the custody or control of, any
20 health care benefit program in connection with the delivery
21 of or payment for health care benefits, items or services, as
22 detailed in Count 1 of the indictment;

23 Second: The false or fraudulent pretenses,
24 representations, or promises were material; and

25 Third: A defendant did so with intent to defraud.

1 Counts 2 through 15 charge the defendants with knowingly
2 and willfully causing fraudulent HCFA 1500 claim forms to be
3 submitted to Medicare, Blue Cross Blue Shield of Western
4 Pennsylvania, PEIA, Accordia National, and Railroad
5 Maintenance and Industrial Health and Welfare Fund. The HCFA
6 1500 claim forms are alleged to be false because they claimed
7 that:

8 1. The service had been provided by a specified medical
9 doctor; or

10 2. The service was medically necessary; or

11 3. The service was performed in accordance with the CPT
12 Manual.

13 To find a defendant guilty of the charges in Counts 2
14 through 15, you need not find that the charged HCFA 1500 was
15 fraudulent for all three reasons, but you must unanimously
16 agree on at least one of the three reasons set forth above
17 and mark the verdict form accordingly.

18 Title 18, United States Code, Section 2, provides:

19 Whoever commits an offense against the United
20 States, or aids, abets, counsels, commands, induces,
21 or procures its commission, is punishable as a
22 principal.

23 Whoever willfully causes an act to be done, which if
24 directly performed by him or another would be
25 [punishable as] an offense against the United

1 States, is punishable as a principal.

2 In order to be found guilty of aiding and abetting in the
3 commission of health care fraud, the United States must prove
4 beyond a reasonable doubt the following three essential
5 elements:

6 First: A defendant knew that health care fraud was to be
7 committed or was being committed;

8 Second: A defendant willfully did some act for the
9 purpose of aiding or encouraging the commission of health
10 care fraud; and

11 Third: A defendant acted with the intention of causing
12 health care fraud to be committed.

13 Before a defendant may be found guilty as an aider or an
14 abettor to the crime, the Government must also prove, beyond
15 a reasonable doubt, that someone, the principal, committed
16 each of the essential elements of health care fraud as
17 detailed for you in these instructions.

18 Merely being present at the scene of the crime or merely
19 knowing that a crime is being committed or is about to be
20 committed is not sufficient conduct for you to find that a
21 defendant aided and abetted the commission of that offense.

22 The Government must prove, beyond a reasonable doubt,
23 that a defendant knowingly associated himself with the crime
24 in some way as a participant--someone who wanted the crime to
25 be committed--not as a mere spectator.

1 The same evidence establishing a defendant's
2 participation in a conspiracy may support a conclusion that a
3 defendant participated in the principal's criminal intent to
4 commit health care fraud.

5 I have previously instructed you that the Government has
6 the burden of proving every element of the offense beyond a
7 reasonable doubt. A key element of the crimes charged in
8 Counts 1 through 15 against each of the defendants is that
9 each acted willfully, with specific intent to violate the
10 law, as follows:

11 conspiring to commit health care fraud and mail fraud,
12 that's Count 1;

13 committing health care fraud, that's Counts 2 through 15;
14 and

15 aiding and abetting in the commission of health care
16 fraud, again Counts 2 through 15.

17 Specific intent to violate the law is the opposite of
18 good faith. If a person acts with good faith, then that
19 person cannot have acted with a specific intent to violate
20 the law, just as a person who has a specific intent to
21 violate the law cannot have acted in good faith. The
22 Government has the burden of proving that each defendant had
23 a specific intent to violate the law, which also means that
24 the Government has the burden of proving beyond a reasonable
25 doubt that each defendant acted willfully and did not act in

1 good faith.

2 Good faith may be an absolute defense to the charges in
3 this case.

4 While the term "good faith" has no precise definition, it
5 generally means an honest belief, a lack of criminal intent.
6 A person who acts on a belief or on an opinion honestly held
7 is not punishable under the law merely because that honest
8 belief turns out to be incorrect or wrong.

9 Thus, if a defendant believed in good faith that he was
10 acting properly, even if he was mistaken in that belief, and
11 even if others were injured by his conduct, there would be no
12 crime.

13 If the evidence in the case leaves you with a reasonable
14 doubt as to whether a defendant acted in good faith or acted
15 willfully, with specific intent, you should acquit that
16 defendant as to those counts in which such reasonable doubt
17 is present.

18 The burden of establishing criminal intent rests upon the
19 Government--I'm sorry, the prosecution. A defendant is under
20 no burden to prove his good faith; rather, the prosecution
21 must prove bad faith or criminal intent beyond a reasonable
22 doubt.

23 All right, ladies and gentlemen, I'll now turn to Count
24 16, which charges conspiracy to launder money instruments.

25 Count 16 of the Indictment charges that during the period

1 from on or about January 14, 1994, and continuing until at
2 least on or about May 20, 1997 in the Northern District of
3 West Virginia and elsewhere, Robert B. Burns, defendant
4 Ronald L. Halstead, and others known and unknown to the Grand
5 Jury, did unlawfully and knowingly combine, conspire,
6 confederate and agree among themselves and with each other to
7 conduct and cause to be conducted financial transactions,
8 which involved the proceeds of a specified unlawful activity
9 (to wit, mail fraud, in violation of 18 U.S.C. § 1341, and
10 health care fraud, in violation of 18 U.S.C. § 1347) that is,
11 the scheme and artifice to defraud as set forth in paragraphs
12 21 through 52 of the Indictment, and the defendants did so
13 knowing that the money involved in the financial
14 transactions, which affected interstate commerce, represented
15 the proceeds of some form of unlawful activity, and was
16 described to promote the carrying on of the scheme and
17 artifice to fraud; in violation of Title 18, United States
18 Code, Sections 1956(a)(1)(A)(i).

19 The Indictment alleges that defendant Ronald L. Halstead
20 entered into a conspiracy with Robert B. Burns to launder
21 monetary instruments in violation of Title 18, United States
22 Code, Section 1956, which provides, in part, that:

23 Any person who conspires to commit any offense
24 defined in this section ... shall be subject to the
25 same penalties as those prescribed for the offense

1 the commission of which was the object of the
2 conspiracy.

3 As stated previously, a "conspiracy" is an agreement or a
4 kind of "partnership" in criminal purposes in which each
5 member becomes the agent or partner of every other member.
6 Because the essence of a conspiracy offense is the making of
7 the agreement itself (followed by the commission of any overt
8 act), it is not necessary for the Government to prove that
9 the conspirators actually succeeded in accomplishing their
10 unlawful plan.

11 The defendant Ronald L. Halstead is charged with
12 conspiring to launder money. For you to find the defendant
13 Ronald L. Halstead guilty of conspiracy to launder money, the
14 evidence in the case must establish beyond a reasonable
15 doubt:

16 First: That the defendant and at least one other person
17 made an agreement to try to accomplish a common and unlawful
18 plan to commit the crime of money laundering, as charged in
19 Counts 17 through 26 of the Indictment;

20 Second: That the defendant, knowing the unlawful purpose
21 of the plan, willfully joined in it, intending to further the
22 unlawful purpose;

23 Third: That one of the conspirators during the existence
24 of the conspiracy knowingly committed at least one of the
25 overt acts described in the Indictment; and

1 Fourth: That such overt act was knowingly committed in an
2 effort to carry out or accomplish some object of the
3 conspiracy.

4 A person may become a member of a conspiracy without
5 knowing all of the details of the unlawful scheme, and
6 without knowing who all of the other members are. So, if a
7 defendant has a general understanding of the unlawful purpose
8 of the plan and knowingly and willfully joins in that plan on
9 one occasion, that is sufficient to convict that defendant of
10 conspiracy even though the defendant did not participate
11 before, and even though the defendant played only a minor
12 part. Of course, mere presence at the scene of a transaction
13 or event, or the mere fact that certain persons may have
14 associated with each other, and may have assembled together
15 and discussed common aims and interests, does not necessarily
16 establish proof of a conspiracy. Also, a person who has no
17 knowledge of a conspiracy, but who happens to act in a way
18 which advances some purpose of the conspiracy, does not
19 thereby become a conspirator.

20 In deciding whether defendant Ronald L. Halstead was, in
21 fact, a member of the conspiracy, you should consider whether
22 he knew the purpose and the object of the conspiracy, and
23 knowing that, willfully participated in the conspiracy, that
24 is, helped advance or further the unlawful object of the
25 conspiracy, and that he did it deliberately, intentionally

1 and willfully, not inadvertently, negligently or innocently.

2 You may consider proof of a defendant's financial
3 interest in the outcome of the scheme when determining
4 whether or not the defendant was a member of the conspiracy
5 charged in the Indictment.

6 As previously stated, an "overt act" is any transaction
7 or event, even one of which may be entirely innocent when
8 considered alone, but which is knowingly committed by a
9 conspirator in an effort to accomplish some object of the
10 conspiracy.

11 The overt acts charged in Count 16 are contained in
12 paragraphs 101 through 111 of the Indictment.

13 A conspirator is responsible for offenses committed by
14 his fellow conspirators if (1) he was a member of the
15 conspiracy when the offense was committed and (2) the offense
16 was committed in furtherance of and as a foreseeable
17 consequence of the conspiracy.

18 Therefore, if you find defendant Ronald L. Halstead
19 guilty of a conspiracy charged in Count 16, and if you find
20 beyond a reasonable doubt that, while he was a member of the
21 conspiracy, his fellow conspirator, Robert Burns, committed
22 the offenses of money laundering - promotion charged in
23 Counts 17 through 26 in furtherance of, and as a foreseeable
24 consequence of that conspiracy, then you may find defendant
25 Ronald L. Halstead guilty of Counts 17 through 26.

1 In Counts 17 through 26, Robert B. Burns has been charged
2 with the promotion of money laundering in violation of 18
3 U.S.C. § 1956(a)(1)(A)(i). The applicable provision of the
4 money laundering statute provides that:

5 Whoever, knowing that the property involved in a
6 financial transaction represents the proceeds of
7 some form of unlawful activity, conducts or attempts
8 to conduct such a financial transaction which in
9 fact involves the proceeds of specified unlawful
10 activity with the intent to promote the carrying on
11 of specified unlawful activity [shall be guilty of
12 an offense against the United States].

13 To prove the charge of money laundering - promotion, the
14 Government must prove the following four elements beyond a
15 reasonable doubt:

16 First: That someone conducted or attempted to conduct a
17 financial transaction having at least a de minimis effect on
18 interstate commerce or involving the use of a financial
19 institution which has at least a de minimis effect on
20 interstate commerce;

21 That term de minimis is not defined but it means minor.

22 Second: That the property that was the subject of the
23 transaction involved the proceeds of specified unlawful
24 activity;

25 Third: That someone knew that the property involved

1 represented the proceeds of some form of unlawful activity.

2 Fourth: That someone engaged in the financial transaction
3 with the intent to promote the carrying on of a specified
4 unlawful activity.

5 Regarding the required "effect on interstate commerce,"
6 the Government must only prove that the transactions affected
7 interstate commerce in some way. It is not necessary that
8 the effect be adverse or particularly great; a minimal (or
9 "de minimis") effect on interstate commerce is sufficient.

10 In this case, the "specified unlawful activity" is
11 alleged to be mail fraud and health care fraud. While I
12 express no opinion about whether anyone engaged or intended
13 to engage in this kind of activity, I instruct you that this
14 does fall within the definition of "specified unlawful
15 activity" under the money laundering statute.

16 An element of each crime charged in the Indictment is the
17 defendant's knowledge of the unlawful objectives of the plan
18 or scheme. The Government may prove that defendants, William
19 C. Filcheck, Scott G. Taylor, and Ronald L. Halstead acted
20 "knowingly," with knowledge of the unlawfulness of the plan
21 or scheme alleged in the Indictment, by proving, beyond a
22 reasonable doubt, that these defendants deliberately closed
23 their eyes to what would otherwise have been obvious to them.
24 No one can avoid responsibility for a crime by deliberately
25 ignoring what is obvious. A finding beyond a reasonable

1 doubt of an intent of a defendant to avoid knowledge or
2 enlightenment of the unlawfulness of a scheme would permit
3 the jury to infer knowledge. Stated another way, a
4 defendant's knowledge of a particular fact may be inferred
5 from a deliberate or intentional ignorance or deliberate or
6 intentional blindness to the existence of that fact.

7 It is, of course, entirely up to you as to whether you
8 find any deliberate ignorance or deliberate closing of the
9 eyes by the defendants to the unlawfulness of the scheme
10 alleged in the Indictment and the inferences to be drawn from
11 any such evidence.

12 You may not infer that defendants, William C. Filcheck,
13 Scott G. Taylor, and Ronald L. Halstead had knowledge of the
14 unlawfulness of their acts, however, from proof of a mistake,
15 negligence, carelessness, or a belief in an inaccurate
16 factual or legal proposition.

17 Furthermore, when considering whether a defendant
18 committed the offense of conspiracy charged in Counts 1 and
19 16, you must consider that there are two aspects of knowledge
20 involved in a conspiracy: (1) knowing participation or
21 membership in the scheme charged, and (2) some knowledge of
22 the unlawful aims and objectives of the scheme. I caution
23 you that participation or membership in a conspiracy cannot
24 be established by deliberate ignorance. A defendant's
25 knowledge of a scheme's unlawful aims or objectives, however,

1 may be proved by deliberate ignorance.

2 Ladies and gentlemen, that concludes my instructions for
3 you on the law. The verdict as to each individual defendant
4 must represent the considered judgment of each juror. In
5 order to return a verdict, it is necessary that each juror
6 agree to it. Your verdict as to each defendant must be
7 unanimous.

8 It is your duty, as jurors, to consult with one another,
9 and to deliberate with a view to reaching an agreement if you
10 can do so without sacrifice of conscientious conviction.
11 Each of you must decide the case for himself or herself, but
12 do so only after an impartial consideration of the evidence
13 in the case with your fellow jurors. In the course of your
14 deliberations, do not hesitate to re-examine your own views,
15 and change your opinion, if convinced it is erroneous. But
16 do not surrender your honest conviction as to the weight or
17 effect of the evidence solely because of the opinion of your
18 fellow jurors, or for the mere purpose of returning a
19 verdict.

20 Some of you have taken notes during the course of this
21 trial. Notes are only an aid to memory and should not be
22 given precedence over your independent recollection of the
23 facts. A juror who did not take notes should rely on his or
24 her independent recollection of the proceedings and should
25 not be influenced by the notes of other jurors.

1 Remember at all times, you are not partisans. You are
2 judges of the facts. Your sole interest is to seek the truth
3 from the evidence in the case.

4 Now ladies and gentlemen, I'm going to stop there and
5 give you the remainder of those instructions after you hear
6 the closing arguments of the parties because they pertain in
7 particular to how to conduct your deliberations.

8 At this time we'll take a ten-minute recess, give you a
9 chance to stretch and when we come back you will the opening
10 of the closing argument by the United States and you will the
11 hear the closing argument of Defendant Halstead. I'm sorry,
12 at the close of United States, we will probably take--we're
13 going to take an early lunch. Is that what we discussed,
14 gentlemen, I'm trying to remember.

15 MR. HARRIS: Yes, Your Honor.

16 THE COURT: Okay. We're going to take an early
17 lunch. So we'll come back in here at ten o'clock and proceed
18 until approximately eleven o'clock, then we'll go to lunch,
19 come back around noon and you'll then hear Defendant
20 Halstead's closing argument. We'll have a brief recess after
21 that, then we'll have the closing arguments of Defendant
22 Filcheck and Taylor and then we'll have the rebuttal of the
23 United States. All right.

24 Thank you for your attention to the Charge. Please
25 follow Court Security and keep in mind, you do not yet have

1 the case and you must not discuss the case among yourselves
2 during this recess. Please leave your notebooks and your
3 charge face down on your chair. We'll see you in ten
4 minutes.

5 (Jury out 9:50 a.m.)

6 THE COURT: All right. Does any party wish to place
7 an objection to any aspect of the Charge on the record?

8 MR. JAFFE: I don't have an objection. I have a
9 concern that I would like to address as an Officer of the
10 Court in terms of jury completion and it cuts both ways, so I
11 just want to bring it to your consideration. It has to do
12 Burns. You gave a missing, what I consider a missing
13 defendant and I understand that, but it struck me as I'm
14 listening to this, we're telling them in the missing
15 defendant charge, the charge against Burns has been removed
16 for your consideration and not before you. The removal of
17 this portion of the case must not influence your
18 consideration of those portions of the case which you may
19 decide and that the money laundering--the substantive money
20 laundering count, we're specifically asking them, in effect,
21 to decide something, whether Burns committed money laundering
22 is a predicate to finding Halstead guilty of conspiracy.

23 Similarly, while it's certainly true that they shouldn't
24 consider Burns not being here, as it's eminently obvious, our
25 contention is Burns is solely responsible and I think that's

1 an appropriate argument to make, so I think it cuts both ways
2 and I'm wondering--I bring that to the Court's attention. I
3 didn't realize that before, but I'm afraid that the jury
4 might feel that there's some inconsistency and they have to
5 come back to you for further clarification; are they to
6 consider Burns at all, because clearly in the Charge they
7 have the money laundering and for--I raise that as a question
8 and just see if anybody has any more thoughts.

9 THE COURT: All right. Let's come back in a couple
10 minutes before the jury is due back at ten and then we can
11 discuss that and I'll make a ruling on the record.

12 MR. JAFFE: Thank you.

13 (Recess from 9:55 a.m., until 10:22 a.m., 02-03-2003)

14 THE COURT: Thank you. Please be seated. I'm
15 handing out to you an additional instruction regarding Doctor
16 Burns. Does the Government have any objection?

17 MR. ADAMS: No, Your Honor.

18 THE COURT: Do the defendants have any objection?

19 MR. JAFFE: I think the one here is perfectly
20 appropriate. The only concern is in fairness could we allow
21 to specify--I don't know how to do it exactly. They're
22 relevant in two respects; one is the money laundering, the
23 other is the defense asserted, which is that Burns is solely
24 responsible.

25 THE COURT: Well, I think I handled that and I've

1 already got the copy on the jury's bench so--

2 MR. JAFFE: Okay, that's fine.

3 THE COURT: Just place--if you have an objection,
4 place it on the record, but I think I handled that for you;
5 tried to.

6 MR. JAFFE: Okay. That's fine. I appreciate that.

7 THE COURT: Okay. We can bring the jury in.

8 (Jury in 10:25 a.m.)

9 THE COURT: Good morning, ladies and gentlemen,
10 welcome back and please be seated. Before you hear the
11 closing argument of the United States, I've asked Carole to
12 place on your chairs an additional instruction and in case
13 there was any confusion, I want to use this instruction to
14 clarify for you how you may consider the actions of Robert B.
15 Burns.

16 As I have previously advised you, the charges against
17 Robert B. Burns have been removed from your consideration and
18 you are not to return a verdict as to his guilt or innocence
19 as to any of the counts in the Indictment. However, you are
20 allowed to consider the actions of Robert B. Burns, as
21 charged in this Indictment, as a basis for determining the
22 guilt or innocence of the defendant as to other charges. In
23 particular, you need to consider the actions of Robert B.
24 Burns in determining the guilt or innocence of the Defendant,
25 Ronald L. Halstead as to Counts 17 through 26.

1 All right. Now at this time, Mr. Adams--or, Mr. Donley,
2 excuse me. Thank you, Your Honor.

3 CLOSING ARGUMENT BY PLAINTIFF

4 MR. DONLEY: Good morning Ladies and Gentlemen. My
5 name is Pat Donley. I represent the United States. I would
6 like to thank you for your kind attention that you've given
7 to us over the last couple weeks. We appreciate your
8 personal sacrifice. Without you this process would not work
9 but we do recognize that this is a sacrifice that each of you
10 had to make to give from your own personal lives to come here
11 and perform this service.

12 I'm going to be talking to you a little bit about my
13 recollection of the evidence and that's exactly what it is,
14 it's my recollection of the evidence. The evidence you
15 determine comes from the witness stand, from the documents,
16 from the exhibits and it is your recollection that is
17 important. Should I say something that does not conform to
18 how you remember the evidence, you are required to go with
19 your recollection and not mine.

20 As we told you at the beginning of this case, this is not
21 a case about whether or not chiropractic care works. This is
22 a case about billing fraud. It's good old-fashioned lying
23 and cheating. It has to do only with that.

24 This was an insurance driven treatment. You know that
25 this was a scheme that pro -- in which these chiropractors

1 provided health care services based upon the patients'
2 insurance coverage rather than any of the medical needs of
3 the patients. This scheme deceived the insurance carriers
4 into believing that these services that were performed were
5 actually done by a medical doctor. In fact, they had been
6 ordered, performed and were supervised by chiropractors. The
7 scheme included billing for unnecessary medical services.

8 One of the things that you're going -- one of the
9 problems that you're going to have when you go back into your
10 jury room is you're not going to have our computer. It's not
11 going to be available to you. Most importantly, you're not
12 going to have Laura back in the jury room that you can say,
13 Laura, please call up this document for me. You're going to
14 have to find these on your own and, therefore, I need to show
15 you how our numbering system works in the Government's
16 exhibits so that you can find them.

17 You have up on the screen behind me how our numbering
18 system works. We have divided the exhibits into -- into
19 categories that generally relate to each of the counts. For
20 example, the first one up, first example on the screen, shows
21 you that the first exhibit there, 001, is that it relates
22 generally to Count 1. The exhibit number is the second three
23 set of numbers, in this case 013. That's the exhibit number
24 you will see on the Government's yellow sticker, those six
25 digits. Down on the bottom corner of each page there is a

1 page number. In order to keep these things straight we have
2 included the first count number, the exhibit number and the
3 then the last three numbers are the page number. That page
4 number changes with each page within the exhibit. The count
5 and the exhibit number stay the same within that exhibit.
6 Count 2 generally relates to Count 2, Count 3 and so on.

7 All exhibits are -- can be considered by you on any
8 count. This is a numbering system that we came up with to
9 try to help you, guide you on finding things within the
10 exhibits. What you're actually going to get are eleven of
11 these notebooks. We have -- this one happens to be -- and we
12 called them out during the trial. This is 001-001. It's the
13 very first exhibit book. This would have been normally
14 called out by the attorneys as 1-001, just dropping off the
15 first two zeros. This book happens to go through, just for
16 your information 1-079. So it's the first 79 exhibits for
17 Count 1.

18 This book happens to have the exhibits beginning with the
19 Count 2 exhibits, Count 2-001 through, in this case 5-015.
20 This is our numbering system to try to help you find things
21 within the exhibits. Hopefully that will be of some
22 assistance to you. As I go through this morning, I'm going
23 to talk about exhibits. For those of you that like to write
24 it down, it may be helpful to find those exhibits later on if
25 you have the numbers.

1 As you know, the indictment charges a conspiracy among
2 other items. Membership in a conspiracy -- to prove a
3 membership in a conspiracy, it's important to know what we
4 don't have to prove and what we don't have to prove is that
5 there was any formal agreement. We don't have to show that
6 there was a formal sit down meeting, everybody says, okay,
7 what are we going to do and everybody agrees to it at that
8 point. We don't have to show that. We're not required to
9 show that there was a meeting at which they planned together
10 all the details of their scheme. Okay? All we're required
11 to prove to you is that the defendant that you are
12 considering had a general understanding of the unlawful plan.
13 There has to be some sort of a mutual understanding as to
14 what was the unlawful plan and this is what -- this is what
15 is oftentimes referred to as a partnership in crime. That's
16 a conspiracy. The defendants have to knowingly join the plan
17 at some point in time and at least one of the co-conspirators
18 has to commit one overt act. Now, we have in the indictment,
19 named many overt acts for your consideration.

20 If you would call up CLS 12 for me, please. Magnify the
21 top section. And to help you out, I thought it might be
22 useful if we tell you where to find the overt acts that are
23 in the exhibits. Exhibit 1-005, these are all corporation,
24 formation type documents. Exhibit 1-005 is the formation of
25 Priority One. 009 is the formation of West Virginia Health

1 Care. 110 is the real property lease agreement. 013 is the
2 service agreement and 014 is an equipment lease. All of
3 those are the Count 1 exhibits. If I can go to the next
4 section please.

5 We've also alleged as overt acts the in-office visits by
6 Doctor Halstead and all of the reports that he generated.
7 Within the exhibits, 1-029 is the IOV Report Cover. The
8 actual IOV Reports are in 030 to 041. There's also
9 additional evidence that we have in the exhibits which is 042
10 and 043. Those are all the IOV Reports.

11 If I can have CLS 13, please.

12 We have alleged as additional overt acts people from
13 Priority One attending various Halstead seminars. That list
14 of seminars attended by the Priority One employees is at
15 Exhibit 1-288.

16 We have alleged a long list of letters of medical
17 necessity as additional overt acts. Those are in Exhibit 1-
18 207 through 240. Again, you only have to find that one of
19 these occurred.

20 May I have CLS 14 please?

21 We have alleged as additional overt acts in the
22 indictment the case study forms from Counts 2 through 15 and
23 they are identified -- these are the specific places within
24 each of those counts where they are. The case study form is
25 2-008, 7-006, 8-009, 9-009, 10-010, 12-008, 14-012, 15-011.

1 In addition, you may also rely upon the testimony of Doctor
2 Price regarding her signing of the case forms, which is
3 indicated in indictment paragraph 69 and you may also wish to
4 consider Exhibit 1-249, which is related to the testimony and
5 treatment of Mr. Muth.

6 May I have up the CLS 15 please?

7 Additional overt acts we've charged in the indictment
8 include the submission of the actual 1500's that are charged
9 in each of the substantive counts. Count 1 is the conspiracy
10 count. Count 2 through 15 are what are known as substantive
11 counts. Each of the HCFA-1500's that are charged have been
12 identified. In most cases, as you can see, the charged HCFA
13 is the first exhibit within each count. Our system failed us
14 on three occasions. Exhibit 8 doesn't work that way. The
15 charge HCFA is actually 8-003. One Exhibit -- on Count 13,
16 the charge HCFA is 13-002 and on Count 15 the charge HCFA is
17 15-002.

18 You can remove that please and blank the screen.

19 The billings for services in Count 2 through 14 are
20 fraudulent because they were billed for services in the name
21 of Doctor Price for days when Doctor Price was not at the
22 clinic, for days before she had seen the patient, for a
23 patient she had never seen and in many cases, for medically
24 unnecessary service.

25 The billing for the service in Count 15 is fraudulent

1 because they are billed in Doctor Medina's name when he never
2 saw that patient.

3 I need to go through with you some charts to show you how
4 to find the various information and make sure you don't get
5 lost when you're back in the jury room. If I could have up
6 CLS 1 please. This relates to Counts 2 through 5 of the
7 indictment. You'll see a chart very similar to this in the
8 indictment. In your jury verdict form, what you will get is
9 something split off on separate pages for each of these
10 counts. Your decision about Count 2 will be on one page.
11 You will have a block with the headings across the top and
12 then the count line for that individual one.

13 There are two things that you -- a couple things that you
14 need to be aware of. The highlighted information is not on
15 your -- is not on the information you will have back in the
16 jury room. That's information I have added to make it easier
17 for you to try to find it, to try to give you some guidance
18 while we're going through this.

19 If you would, would you -- a couple of dates that you
20 need to be prepared to try to find when you're in the jury
21 room. The first date is the date of service. Would you put
22 a red arrow on that for me, please? As you can see, that's
23 where the date of service is. That will match with the block
24 that you should be very familiar with on the HCFA-1500's in
25 block 24. That is not the date of the claim or the date the

1 claim is submitted. Would you a put a red arrow on that date
2 for me please on Count 2? You see there, in this case,
3 they're several months apart because of the way they
4 submitted their billing.

5 Now if we could remove that from the screen and let's go
6 to the charge HCFA, which is 2-001 please. Would you magnify
7 the lower portion of the HCFA? Thank you. And if you would
8 put a red arrow on the date of service, please. Can you see?
9 This date should be very familiar to you. That's the date of
10 service. That was the number on the right-hand side of the
11 chart that we were looking at before.

12 The submission date, would you put a red arrow on that
13 please? You can see the submission date is in the bottom
14 lower left-hand corner in this particular one near where
15 Rebecca Price's name is. Because of the poor quality of some
16 of the photocopies, you may not always be able to read that
17 number. If you would remove the magnification, please.

18 There is another place that the submission number appears
19 on it. Would you magnify that please? And that's right
20 there in the middle of the form. This number is much more
21 frequently readable because it's in the center of the copies.

22 Would you remove the magnification? You can see, if
23 you'll magnify that area again so the Jurors can see it. You
24 can see that that number, which is 11/23/96, if you remove
25 the magnification and go to the center one, is the same as

1 the number in the middle, 11/23/96. Would you remove the
2 magnification please?

3 Go back to CLS-1, please.

4 You can see that you'll need to know for the first five
5 Counts the charged HCFA is the first exhibit within each
6 count, 2-001, 3-001, 4-001 and 5-001.

7 Let's go to CLS 2 please. We see I've identified for you
8 again each of the charged HCFA's. You can see, as I told you
9 before, the system broke down on Count Number 8, the charge
10 HCFA is 8-003.

11 If I could have up CLS 3 please.

12 And these are broken down, by the way, by insurance
13 companies. The first one that I brought up, the first five,
14 those were all Medicare submitted claims. The second group
15 was the Pennsylvania Blue Cross/Blue Shield group. This is
16 the PEIA group. Now this one is perhaps a little trickier.
17 You will see that again we're going to have to identify the
18 date the claims were submitted and the first one, I guess,
19 would be useful to note is that it's 12/21/96. Would you put
20 a red arrow on that please?

21 If you'll remove that document and call up 10-001. This
22 is -- magnify the bottom half of the page, there we go,
23 that's correct. As you can see there is -- this was a
24 computer generated copy from the insurance company as they
25 testified to. This is from the information that they

1 inputted. There is no date in the block that I had pointed
2 out to you and I'll show you now how to find the date that
3 this claim was submitted. Would you remove the magnification
4 please?

5 And would you magnify the Julian date at the top? Okay.
6 If you'll remember the testimony is that these numbers are a
7 Julian date. The first number you ignore because that's the
8 location the claim is processed. The second 6 on there,
9 would you put a red arrow on that six. Thank you. That 6 is
10 the year. That tells you that it was 1996. At the three
11 numbers after the second 6, the 355, that tells you the day
12 of the year. If my math is right, the 355th day of the year
13 is -- makes that December 21st of 1996, the date the claim was
14 submitted. If you would remove that please.

15 Let's go to 11-001, charge HCFA in Count 11, magnify the
16 Julian date please. Again, this would show -- this would
17 have been submitted in 1996, the 316th day of the year makes
18 it November the 12th, 1996

19 Go ahead and remove the -- let's go to 12-01. Again,
20 this is a 1996 claim submitted on the 299th day. If my math
21 is right that's October the 26th, 1996 and go ahead and remove
22 the magnification. We'll go to Exhibit 13-002. This is one
23 of those ones that did not follow our system. Magnify that
24 please. Again, this was submitted in 1996. The 305th day of
25 the year would make that November 1, 1996, if my math is

1 correct. All these dates are only required to be on or
2 about. They don't have to be perfect.

3 If I can have up CLS 4 please. This shows you where to
4 find the HCFA-1500 for Count 14. This is a little closer to
5 what your actual verdict form is going to look like. You'll
6 have one count per page except you won't have the portion
7 that's marked in yellow on yours. That charge HCFA is 14-
8 001.

9 If I could have up CLS 5 please and this relates to the
10 Accordia claim and you can see the charge HCFA is 15-02.
11 This is the HCFA for which Doctor Medina never saw the
12 patient at all. If we can bring up the lights now please and
13 remove the -- and blank the screen.

14 Count 16 in the indictment, Doctor Halstead is charged in
15 a money laundering conspiracy. Their first step in this
16 conspiracy was to create the corporate structure and if you
17 remember the testimony from Mr. Wilson there was a meeting
18 with Halstead, Burns and Wilson in which they talked about
19 how to structure the -- how to structure these corporations,
20 how to form them and how to set them up so that the money
21 would come in to Priority One and it would be sucked out over
22 into the West Virginia Health Care Management Company, the
23 one that Burns owned and then they would distribute the
24 money. Among the various things that they did with that
25 money, once they got it into the management company, was they

1 used it to promote or to continue their scheme. They did
2 various things with it. We have charged a certain number of
3 those checks as the substantive money laundering accounts but
4 that's also part of the conspiracy because this is how they
5 set it up.

6 Now the checks that are involved in the conspiracy and in
7 the substantive money laundering counts are all in one count
8 and that is in Count 16 and those are exhibits -- all of
9 Exhibits 1 through 24.

10 Because this is a conspiracy, it's a money laundering
11 conspiracy, we also have to please the overt act, like we
12 indicated on the first conspiracy. If I can have up CLS 16
13 please. I thought it might be useful to show you where you
14 will find those exhibits. The overt acts, as alleged in the
15 indictment, can be found at Exhibit 1-110, that's a lease; 1-
16 013, the service agreement; 1-014, the equipment lease;
17 Wilson's testimony and then the actual exhibits within Count
18 16 themselves, which is 16-01 through 16-024.

19 The exhibits for the substantive money laundering counts
20 are contained within Count 16 and they go directly -- they
21 just go right down the line beginning at Count 15.

22 For Count 17 -- excuse me, I said that wrong. For Count
23 17 the exhibit that you need to know about is 16-015, then
24 they continue on through each of the substantive money
25 laundering counts.

1 If I could have up on the screen please, CLS 11. Would
2 you magnify the bottom third of the screen please? This is
3 the beginning of the money laundering scheme and the
4 substantive money laundering accounts. You have Priority One
5 Medical Associates. They submit the fraudulent HCFA-1500's.
6 They submit them in in this case to Medicare, PEIA, Blue
7 Cross, Accordia and railroad maintenance. Those insurance --
8 those health care companies pay it. They mail the money
9 back. The HCFA-1500's are mailed down to -- or mailed to the
10 insurance companies. The insurance companies mail the checks
11 back to Priority One. Once that money is received they
12 deposit the money into Priority's One bank account. If you
13 remember the testimony from Wilson, that that was a P & C
14 bank account.

15 If you'll remove the magnification and magnify the middle
16 third please. Once the money was in the Priority One bank
17 account, we have charged the transfer from Priority One to
18 West Virginia Health Care Management, of four (4) different
19 checks. These checks were also included within the
20 conspiracy count of Count 16.

21 But specifically we've charged as Count 17, the issuance
22 of a check for \$75,000, a check in Count 18 for \$65,000,
23 Count 19 \$60,000; Count 20 \$80,000. This money was all
24 transferred on the dates indicated to the West Virginia
25 Health Care Management.

1 Please remove the magnification and we'll take the top
2 third, please. Once they had the money into the Health Care
3 Management there were an assortment of different places the
4 money went to. We have charged two different places they
5 went to. One is they pulled the money out and they
6 transferred the money to Robert Burns himself and he took
7 that -- those money out in three checks that we have charged,
8 in Counts 24, 25 and 26 and in the amounts as indicated,
9 which are for Count 24, \$4,376 and some change. Count 25,
10 \$3,525 and Count 26, \$16,790.70. They also issued checks to
11 Doctor Halstead. We have charged three of those transfers to
12 him in Counts 21, 22 and 23. Each of those checks were for
13 \$3,000. You can remove that please.

14 Now you will note when you're looking at Counts 17
15 through 26, that Doctor Burns is charged in those counts.
16 Doctor Halstead is criminally responsible for those if you
17 find that while he was a member of the conspiracy a fellow
18 conspirator, Doctor Burns, committed the offenses of money
19 laundering promotion as charged in Counts 17 through 26 in
20 furtherance of that conspiracy and as a foreseeable
21 consequence of that conspiracy.

22 Let's take a moment and turn to the evidence on -- that's
23 been presented to you over the last several weeks. As you
24 know, in 1993-4 timeframe Doctor Halstead was retained to
25 provide management consulting services to Burns and his

1 various companies and in doing so Halstead established the
2 Halstead program at the Burns' clinic. As I mentioned to you
3 before, we don't have to prove a formal agreement as to this
4 conspiracy. We only have to prove a mutual understanding, a
5 partnership in crime so what is -- what is the evidence that
6 there was a conspiracy?

7 One of the things I want to point your attention to is an
8 exhibit that I can't put up on the screen. It's a tape.
9 It's one of the tapes we played very early on in the trial
10 and it's tape -- the exhibit number is 1-078. You will have
11 this tape back in the jury room with you. On this tape --
12 this is the Priority One staff meeting that you've heard
13 about several times in the trial. If you'll remember back to
14 Twigg's testimony in the first week of the trial, he told you
15 that this meeting -- this was a staff meeting of Priority One
16 in anticipation of a Halstead visit and when you -- if you
17 listen to that tape you will hear the doctors getting
18 together talking about an assortment of things to get ready.
19 It appears like they're talking about a bunch of forms and
20 documents that they need to review and get ready so that they
21 can understand what their meeting with Halstead's going to be
22 about. You hear that there's -- you hear when they talk they
23 discuss various doctors that have been at the clinic and
24 they're talking about Doctor Medina and it appears like he
25 has been there only a short period of time because they're

1 talking about how much better he is than the last doctor and
2 then they come up to the part where they're talking about
3 Medina being pliable and you can hear the doctors laughing.
4 It's quite evidence that they think this is cute. Then you
5 can hear Taylor say that Medina should be diagnosing. He
6 never diagnoses. Then you hear them talking about how they
7 need to have Halstead work with Medina to get him diagnosing
8 more. You hear Burns saying that Medina is really good for
9 the practice. Medina is a real gem and then they go through
10 and they're talking about some other stuff and they bring up
11 some reports that they're obviously looking at while they're
12 talking about it and they're complaining that the insurance
13 company had cut down on the amount of money that they were to
14 receive and they're unhappy about that. And Burns tells
15 them, make sure you don't list anything as mild. List as
16 everything as aggravated, severe or badly degenerated. What
17 you don't hear is anybody saying wait a minute, that is
18 wrong. We list it as it's supposed to be.

19 This is a conspiratorial meeting. These people were
20 planning -- their crime had already started. They were in
21 full force and they knew what they were doing. They knew
22 that they were going to list everything as aggravated, severe
23 and badly degenerated.

24 And then they go on a little bit further and Burns says
25 hey, if we don't have it documented, we have to put something

1 in there. When it comes down to reporting make something up
2 to put in there 'cause if you don't we don't get paid. Now
3 both Filcheck and Taylor are sitting in this meeting.
4 They've admitted that to you on the stand. They admit to you
5 that they never protested when Burns said to just make
6 something up so that they could get paid because that's what
7 they were doing, that's what they continued to do. This
8 meeting was sometime in 1994. Taylor and Filcheck were there
9 all of 1994. They stayed there from this meeting forward,
10 the rest of '94. Taylor and Filcheck were there all of 1995.
11 They were there all of 1996. They were up there through the
12 raid. They were there after the raid.

13 This shows you that they knew what was going on in 1994.
14 They were willing participants in this scheme. They knew
15 exactly what was going on. In fact, this fits into exactly
16 what Filcheck told Hudson on the day of the search when he
17 was interviewed. Filcheck said eighty to ninety percent of
18 the letters of medical necessity were bogus, that they were
19 just making stuff up to get paid. They knew exactly what
20 they were doing. Make something up to put in there because
21 if you don't we won't get paid. '94. '97.

22 I thought it was more than a little telling when asked
23 about why he wasn't protesting. Filcheck responded by saying
24 Burns said it. It was not my concern. He took the position
25 he was just taking orders from the boss. I mean, I think in

1 fair summary that was his position throughout his cross-
2 examination, I'm just taking orders from the boss.

3 Taylor took the position he was just taking orders from
4 the boss. In fact, Taylor and Filcheck admitted to the
5 agents that they were ordering testing based upon Halstead's
6 protocol, just taking orders from the boss.

7 Taylor and Filcheck said that the Halstead treatment
8 protocol was based upon the insurance coverage of the
9 patient, not on the medical needs of the patients.

10 What does all this show you? What's the conclusions that
11 you can draw here? Well, one, that they knew that there was
12 a plan to base the treatment on the patient's insurance
13 coverage and not on the medical needs of the patient.

14 Two, it shows you that they had agreed to be part of the
15 plan because they were doing it. It shows you that they were
16 willing to be part of the plan. They knew exactly what was
17 going on in 1994; they continued all the way through 1997.

18 Ladies and gentlemen, most organizations have leaders;
19 they have underlings and criminal enterprises, criminal
20 partnerships are no different. In this one Halstead was the
21 mastermind, Burns was the boss, Taylor, Filcheck, Medina,
22 Twigg, they were all underlings. An underling is just as
23 guilty as the boss. An underling is just as guilty as the
24 mastermind.

25 Now, admittedly, Taylor and Filcheck were unhappy with

1 their roles in this conspiracy. They were having to do too
2 much work for too little pay was their complaint. But you
3 know what, an unhappy underling is still an underling in a
4 criminal enterprise.

5 Additional evidence of this conspiracy can be seen on
6 Exhibit 1-136. If you'll remember this is the notes of a
7 meeting with Halstead on February 4th, 1997. I believe that
8 these are Doctor Taylor's notes. If you look at the
9 highlighted section here -- would you magnify that please?
10 This is from his meeting with Doctor Halstead. I misspoke.
11 I misspoke. These are Filcheck's notes. I apologize to you.
12 These are Filcheck's notes of his meeting on 2/4/97 with
13 Halstead. Taylor's present at this meeting. You see the
14 Halstead protocol here. First week. TG order. TG,
15 temperature gradient. Second week, neurometer. Third week,
16 down at the bottom, range of motion, rehab, other tests. If
17 you will remove that please and let's go to 1-044.

18 And this is the first page of the same meeting that we
19 just -- we reviewed Filcheck's notes on. These are Taylor's
20 notes. Can we go to the second page please and magnify the
21 yellow at the top. Again, you can see this tracks exactly
22 with Filcheck's notes. The first week TG, second week
23 neurometer, third weeks additional treatment. Highlighted in
24 blue something that I was noticing, diagnosis needs to be
25 pain. Very interesting quote from their meeting with Doctor

1 Halstead, clearly instructing them what the diagnosis was to
2 be for these patients before they ever arrived at the place.

3 Both of these exhibits track exactly the statements that
4 they gave to the agents as to what the Halstead protocol was,
5 what they were ordering and how they were doing it. They
6 knew what it was. They knew what they were doing and they
7 were doing it.

8 Both of these notes also refer to recording of the ten
9 point exams and we managed to pick up a couple of the ten
10 point exams on tape when we raided the place. We also picked
11 up some of -- of Halstead's instruction -- one of Halstead's
12 instructional tapes. That tape is 1-264. We also picked up
13 the instruction sheet, the training sheet that he gives out
14 which is 1-120. Will you put that up on the screen please?
15 Would you magnify the highlighted sections?

16 You've seen this several times. Doctor is talking with
17 the patient, go around sit down beside the patient and say
18 the following: I think you'll agree with me that we have a
19 serious problem here and then I've underlined for you: This
20 is to suffice the objection. Now when I read that I didn't
21 know what the word suffice meant. I had to go look it up.
22 It means to meet or to overcome so this means this is to meet
23 or overcome the objection.

24 If these people need Medicare -- I mean need medical
25 care, why are you having to meet their objections? Why are

1 you having to overcome their objections. I don't want to
2 take these pictures unless you're interested in doing
3 something about this back problem. Again, to suffice the
4 objection and handle it properly. Why are you attempting to
5 overcome the patient's objection? If they don't want the
6 treatment, they don't want the treatment. Why do you have to
7 overcome them? Why do you have to overpower them? Because
8 they don't need the treatment but you need them there in your
9 clinic so you can bill for the services.

10 Can I have page two please? Magnify the section at the
11 top. Thank you. What do you think about these pictures?
12 I'm really glad we took those pictures. These vertebrae are
13 severely twisted out of position. You've heard that phrase
14 numerous times throughout. I have underlined here, this is
15 the only dialogue that should be used. You've heard Doctor
16 Halstead's explanation on the stand about what those words
17 were -- what he thought those words were supposed to mean and
18 his explanation about why he was instructing the people to
19 use only this dialogue.

20 You are the sole judge of the credibility of the
21 witnesses. It's your job to determine whether or not he
22 meant the words that are on those paper -- that is on this
23 paper that he was distributing or did he mean something else?
24 It's your job to decide it. You don't have to accept things
25 that you find to be unbelievable, incredible. You determine

1 the evidence.

2 The other thing I wanted to point out for you is the --
3 on this is the twenty to thirty treatments, twenty for cash,
4 thirty for quality insurance. It's very interesting here
5 that cash people seem to get better quicker. People who have
6 quality insurance seem to need more in care. It's amazing
7 how that has occurred. You saw Doctor Halstead attempting to
8 distance himself from this language.

9 Can I have the section at the bottom please? Again, this
10 is part of the script that the doctors are supposed to be
11 using word for word. The patient has said to the financial
12 person, I don't want it and the financial person is supposed
13 to get up and go find the doctor and bring the doctor to the
14 little office where they were doing the financial and the
15 doctor is trying to convince the patient to become a patient.
16 Let me ask you a question, do you feel you need the care?
17 Well, I do too. As you remember those vertebrae are severely
18 twisted out of position. I hate to see you leave here today
19 not making a commitment to get the treatment you know you
20 need.

21 Why do you have to put that kind of psychological
22 pressure on somebody in a doctor's office? You either need
23 the care or you don't. You don't have to be convinced to be
24 a patient.

25 Let's look at the bottom part that we didn't really focus

1 on with much of the testimony. I've underlined it. This
2 procedure will be performed on all patients coming from the
3 educational dinner who have qualified insurance coverage.
4 Okay? Get these people in for the dinner, they have to have
5 the insurance coverage or it -- it isn't worthwhile doing
6 because why? Because you need an insurance company so you
7 can bill them.

8 If this script is followed word for word, we should see a
9 large improvement in our ten point conversions. Word for
10 word. This is what they were supposed to do. He was the
11 mastermind behind this plan. This plan was executed by
12 Burns, by Twigg, by Medina, by Filcheck, by Taylor. Let's go
13 ahead and remove the magnification please and then blank the
14 screen.

15 Twisted vertebrae. Now you've heard those words before.
16 Some of the places that you've heard them are the four
17 different patients on the same tape that you heard from
18 Doctor Filcheck's own mouth. Doctor Filcheck told you I'm
19 really glad we took those x-rays. He told you, you need to
20 get this taken care of. You heard him say these are severely
21 twisted bones. You heard him say to those four patients in a
22 row, on a tape, twenty to twenty-five to thirty visits. He
23 was following the instructions. He was participating in this
24 plan. Exactly what he was taught. The snippets, for those
25 of you who take notes, the snippets are on page 1-266, 267,

1 268 and 270. The full tape is 294. All of those are 1 dash,
2 okay.

3 All right. Let's call up 1-122. These are Taylor's
4 notes of his meeting with Halstead discussing the ten point
5 exam. Here is what he's teaching. I think you'll agree with
6 me we have a serious problem here. Just what you saw on the
7 Halstead training sheet. Read the disclaimer. I want to get
8 the x-rays only if you're ready to do something about it.
9 Just exactly what Halstead was teaching. This is what he was
10 writing down. Let's go to the next page.

11 Here he has the twenty to thirty visits, set up the
12 appointment, make sure you get the people in there, exactly
13 what was being taught. Remove the highlight. Do you feel
14 you need the care? Sound familiar? Where could he have
15 learned those words from? Remember bones severely twisted.
16 I something hate to have you leave the office without getting
17 the care you need. See the word objection written off in the
18 margin. What can we do to help you get under care? Why do
19 they need to convince these people to get under care?
20 Because they needed them in to do billing for unnecessary
21 services.

22 The similarity in the language between what Halstead is
23 teaching, what Taylor and Filcheck's notes and tapes say show
24 you that these people were all acting in concert together.
25 They knew what they were doing and they were doing it on

1 purpose.

2 Halstead had a program. Had a program that he installed
3 and used through Priority One and I think we should take a
4 moment and talk about the Halstead program as it was at
5 Priority One.

6 Can I have up exhibit 1-110 please? This was the note or
7 the chart that Doctor Price wrote up after attending a Four
8 Phases of Care meeting at Priority One. The first phase of
9 care is Hook 'Em. Let's talk about Hook 'Em for a minute. I
10 want to direct your attention back to the testimony of
11 Rogers. Remember he was the telemarketing guy that came in
12 and tested -- testified on I think the second week of trial
13 like Monday or Tuesday of that second week, Monday was a
14 holiday. He was the one who told you about calling people to
15 schedule them for a steak or chicken dinner. He told you
16 about this little interest card that they had and about how
17 the people were treated. There was a distinction, a very
18 bright line. If you had insurance you got the earliest
19 dinner and you were brought in right away. No insurance, you
20 were scheduled for a dinner sometime way in the future. He
21 told you that they sent reminder cards to those who had
22 insurance and no reminder cards to those without insurance.

23 Go ahead and blank the screen please. Remember the
24 interest card that Rogers talked about, the little card that
25 was supposedly dropped in that plastic box that was passed

1 around that second week a lot. It had a blank on it to
2 determine if a person had insurance or not, you remember
3 that. Well that card, that blank is part of the Halstead
4 program because they got to find out about your insurance
5 right away. They need to know it because they don't want to
6 waste the money on a dinner for somebody who doesn't have
7 insurance because the goal is to get people in with insurance
8 so they can bill for it. Now that was part of the Halstead
9 program.

10 Carol Stover, okay, one of Halstead's employees, was the
11 marketing person. You saw her name on some of that exhibit
12 that I put in through Rogers that dealt with the marketing.
13 You saw the practice systems' name.

14 If I can have up Exhibit 1-265 and let's go straight to
15 page 8 please. If you remember this is the actual card.
16 Name, address, city, state, residence phone, place of
17 employment. Remember Halstead's testimony about that line
18 that I've got highlighted on this card? And by the way the
19 highlighting on all of these exhibits, that's my
20 highlighting. It's for my emphasis. It's not on the
21 originals and that's throughout all the exhibits that I've
22 been showing you.

23 Remember how Halstead tried to distance himself from his
24 own employee. He told you that, well, I mean that was
25 something Carol Stover did. I had nothing to do with that

1 'cause I didn't agree with it. Okay.

2 I thought it was particularly interesting Trent's
3 testimony about that same blank. Remember he was being asked
4 why would you put a blank like that on the card and he told
5 you that was because they wanted to make sure that the people
6 coming to the dinner were local. Do you remember the next
7 question? Couldn't he figure out they're local from the
8 address on the card? They had this on there because they
9 wanted to know what the people's insurance was and they could
10 figure that out from your job and that's all that it was
11 there for.

12 Let's go back to Exhibit 1-110 please. The second phase
13 of care at Priority One was the Reel 'Em In. Reel 'Em in.
14 The Halstead system included the establishment of specific
15 treatment protocols based upon the patient's insurance
16 coverage and not on any medical. One of the first steps in
17 reeling 'em in was that ten point exam that we've already
18 talked about a little bit. According to the Halstead ten
19 point exam script, Taylor and Filcheck were to tell the
20 perspective patients this information exactly on his script
21 during the patient's first visit to that clinic. These
22 vertebrae are twisted severely out of position. This is the
23 only language that was to be used and why? Because it was
24 designed to scare people into agreeing to accept treatment so
25 that they could bill the insurance company.

1 Now Halstead himself tried to distance himself from his
2 own language in his testimony. He had to admit, because it
3 was printed down there, it was on the tape, that he had used
4 the words these vertebrae are severely twisted out of
5 position and that this is the only dialogue that was to be
6 used. He finally admitted that this may have been a poor
7 choice of words, particularly since it's been up on the
8 screen so many times throughout this trial.

9 You can go ahead and raise the lights please, remove that
10 from the screen, please.

11 The patients were encouraged by both Taylor and Filcheck
12 to believe that the chiropractic treatment would actually
13 help them and that their insurance would pay for the
14 treatments so it was going to cost them nothing or next to
15 nothing. This often overcame the patients' objections, i.e.,
16 it sufficed the objection. This process, okay, was known
17 within the clinic, known by the terms that Halstead used, as
18 the conversion of the patients. The conversion of a patient
19 meant taking the person who didn't need the service and
20 making them a patient by converting them into a patient.
21 This was a figure that was closely tracked at Priority One.
22 It was closely tracked and monitored by Burns and Halstead
23 through Twigg and it was closely tracked by Filcheck and
24 Taylor because they got bonuses based on it. This was where
25 they got money. Now Taylor and Filcheck's conversion

1 sessions were actually tape-recorded. That's what you heard.
2 You heard those complaints asked. You heard them over --
3 trying to overcome patient's objections. You heard them
4 telling people, four in a row, Filcheck's case, that they had
5 severely twisted bones.

6 What does Halstead say about the reel 'em in phase of the
7 care. Let's go to Halstead's own words in the Burns in-
8 office visit reports and we'll look -- I've pulled up several
9 selections. These are clips from the various IOV Reports to
10 the Burns clinic. Each of these IOV's are in evidence.
11 These are clips that I've taken from them.

12 "Don't worry about the patient's balance
13 if the insurance pays well."

14 What does that tell you about it? We're in this for the
15 money. We want to get paid well, want it from the insurance
16 company. If the patient is being done for the patient's
17 balance, if they're billing the patient, the patient's less
18 likely to come back. They don't want that. They want the
19 flow of money to continue so don't worry about it as long as
20 you're getting your money from the insurance company.

21 Okay. Next slide please. Here's where they're talking
22 about the ten point conversions. Work more with doctors on
23 ten point conversion. One associate is not doing well, work
24 with him. Give more ten points to new associate. He's doing
25 much better on the conversion. Let's look at that date.

1 11/30/94. Who was the new doctor? By the evidence presented
2 to you, you know that is Doctor Filcheck because he had just
3 joined the practice in 1994.

4 Next page please. Work on insurance verification book so
5 we can find more -- find out more about qualified insurance.
6 Get your insurance bible up to date.

7 Next screen please. You have one associate who's fairly
8 good at the conversions. Let him do three-fourths of all ten
9 points. The other associate needs to be worked with more.
10 Both doctors need to learn how to overcome objections. Why
11 do you have to overcome the patients' objections? Both
12 associates need to learn how to ask questions. Let the
13 patient come into their own conclusions and accept care.
14 This needs to be really worked on.

15 May I have up Exhibit 1-110 please? Okay. The third
16 phrase of care at Priority One clinic, keep them on the line.
17 They had an assortment of ways they kept them on the line.
18 Okay. The first thing that they did to keep them on the
19 line, first tool that they used to keep them on the line,
20 were the case study forms. Okay. This was an integral part
21 of the Halstead system. In this way the chiropractors were
22 directing and ordering the treatment that was to be given to
23 the patient right from day one. The interesting thing about
24 this was once this form was cycled around, it was stuck in a
25 file and never went back for any changes to it.

1 Could I have up 1-126 please? Could you magnify the top
2 section, please? You remember this is the case study that
3 was found on Taylor's desk at the time of the search. If
4 you'll remove the magnification, we'll go down to the section
5 in the middle. This is where he is ordering. This is where
6 you can order the various tests and services. This is a go
7 by. It was on his desk at the time of the search.

8 If I could have up Exhibit 1-127. This is another go by
9 that was also found on Taylor's desk, according to the
10 testimony that this is in Twigg's handwriting. This is
11 another co-conspirator writing down notes he learned from
12 Halstead as to what was going on, how to build these -- I
13 mean how to hoard services so they could eventually end up
14 billing for them.

15 Let's go to page 2 of this exhibit please. Magnify
16 please. This is an area that we didn't really focus on
17 during the trial. This is page 2 of the Twigg case study go
18 by. Assume every test is positive and they are under care
19 for a year. This is what they were doing at this time. Go
20 ahead and remove the magnification please.

21 In addition to the case study form, before they got to
22 that, they had the treatment protocol. Now this was designed
23 by Halstead, implemented through Burns and Twigg, used by
24 Taylor and Filcheck. We know this because we have notes of
25 the meetings with both Taylor and Filcheck meeting with

1 Halstead about what the treatment protocol was to be.

2 If I could have up 1-044 and go to page 2. Remember
3 this, we just had this up a couple minutes ago. This -- this
4 is the notes of the meeting between Taylor, Filcheck,
5 Halstead and Burns, laying out their treatment protocols.

6 Go ahead and remove that and I'll go to 1-136 please,
7 page 2. Again, same notes -- I mean, this is Taylor's notes.
8 The first were Filcheck's. Same meeting. Laying out the
9 protocol, making sure that everybody knows what the program
10 is, the Halstead program. Go ahead and remove that. Blank
11 the screen please.

12 In addition to the case study form, the treatment
13 protocol, they also used a couple other tools. They called
14 them the Rolodex system and they called them the non-
15 compliance form. The Rolodex system was a unique feature of
16 this program that Halstead was instituting because it was
17 necessary to have. If you're performing services that the
18 patients don't really need, there's a tendency to forget to
19 do them so you got to write them down and you got to have a
20 system of enforcing them to make sure that these services
21 that the people don't need actually happen. That's why you
22 got to have such a detailed tickler system. So much is
23 involved with making sure that you paper these files, make
24 sure the things are done just exactly the way Halstead wants
25 because otherwise you're going to forget it.

1 Now the non-compliance form was a form used to make sure
2 that the patient got everything that was on the check-off
3 list because if you didn't you couldn't bill for it and
4 therefore they'd have to have special permission, a really
5 good reason not to do something.

6 All these forms came from Halstead. They were all an
7 important part of the scheme because they enforced the
8 system, they papered the file. The treatment wasn't
9 important. What was important was papering that file to make
10 it look like the MD was doing all this. Okay.

11 Another way they kept the patients on the line was
12 through the use of medically unnecessary tests. Could I have
13 up Exhibit 1-055? Ms. Johnson from the West Virginia Board
14 of Chiropractic Examiners testified that this letter was sent
15 to all the West Virginia chiropractors and that among those
16 people that this would have been sent to were Taylor and
17 Filcheck. Now, she also testified that neither Taylor nor
18 Filcheck were certified to perform any of the diagnostic
19 tests listed on this letter.

20 Now I want you to think back to the testimony of both
21 Taylor and Filcheck because they admitted to you that they
22 were not properly trained in their chiropractic colleges on
23 how to use these diagnostic tests. Now you got to kind of
24 put yourself in the position that they were in at Priority
25 One, remove the magnification and magnify the date please, on

1 May 24, 1996 or thereabouts when this letter came in. They
2 were at full speed. They were running diagnostic tests on
3 all these patients, running -- this letter comes in, what are
4 they going to do? They'd been running this scheme for two
5 years at this point when this letter comes in. Go ahead and
6 remove the magnification please.

7 Well, the thinking must have been something along the
8 lines of we'd better check with the man behind the program,
9 better check with the man behind the plan. Better check with
10 the man with all the answers. And you know that was Doctor
11 Halstead. Let's go ahead and see what Doctor Halstead's
12 response was to these folks. Okay.

13 What's probably most interesting about his response is
14 what's not in his response. He doesn't say get those
15 chiropractors trained, right now, get them trained. If
16 they're not licensed to do this, get them trained. He
17 doesn't say that. What does he say? If this is billed
18 through MedicalCorp. And ordered by MD and supervised by MD
19 then the chiro isn't doing it.

20 Part of the Halstead system is to conceal from the
21 insurance companies what they were really doing in this
22 claim. What he is saying here is bill it through the
23 corporation, the medical corporation, in the name of the MD
24 and you won't get caught. You're not going to get caught if
25 you do it this way. I think you do get caught. Go ahead and

1 remove the magnification and go to the other handwriting.

2 Thank you.

3 If you do get caught, the Chiro Board has absolutely no
4 sanctions. That's what he was saying. Hide it; conceal it;
5 don't worry about it, but if you do get caught, no big deal.
6 Who cares? The Chiro Board can't do anything to you for
7 violating West Virginia statutes. Okay. Go ahead and remove
8 the magnification and blank the screen please.

9 Now we have other evidence in the case that they were
10 performing medically unnecessary services at this point. We
11 have the admissions of Defendant Taylor. In his March 24th
12 interview Taylor admitted that each patient's treatment
13 varied by their insurance coverage. He admitted that the
14 tests at the clinic were ordered based upon a protocol set up
15 by Halstead and that if the insurance -- the patient's
16 insurance would not pay for a particular service, they would
17 do a different service that the insurance company would pay
18 for. Taylor admitted that he knew all of that. He also
19 admitted that he knew that Twigg was ordering medically
20 unnecessary tests in order to get additional money from the
21 insurance companies. Now why is that important to you?

22 THE COURT: Mr. Donley, I just wanted you to know
23 you're beyond the one hour and you can continue but it cuts
24 off on the time for rebuttal, however you want to handle it.

25 MR. DONLEY: Yes, Your Honor. Moving right along.

1 May I have Exhibit 1-131 please? Recognize this letter? It
2 was up on the screen several times. Things that stress me
3 out. You know this is from Doctor Taylor. You know from the
4 highlighting his words "looking for testing, otherwise I lose
5 an office visit". This is a clear indication Doctor Taylor
6 knew they were performing medically unnecessary testing.
7 They were looking for reasons to test these people,
8 otherwise, they were going to lose an office visit. Okay.
9 Go ahead and remove the magnification.

10 It's not good enough to get the patient well. I get
11 penalized when they don't stay the 36 visits. He's a
12 disgruntled employee. He's unhappy with -- he's having to do
13 a lot of the work and not getting paid much. He wants a
14 bigger slice of the pie. He's willing to stay there and do
15 it. He just wants a bigger slice of the pie.

16 Okay. Go ahead to -- go ahead and magnify the top
17 section. People don't come back because they see the prices
18 on their bill, I get penalized because they didn't follow
19 through with the 36 program. He's complaining. He's not
20 getting his bonus program because the prices are too high.
21 He wants the prices dropped so the patients won't see them,
22 so they'll come back so he can get the bonus program. He's
23 going along with the program. He knows what it is. Go ahead
24 and remove the highlight please.

25 Stressed out. I'm working more hours and making just